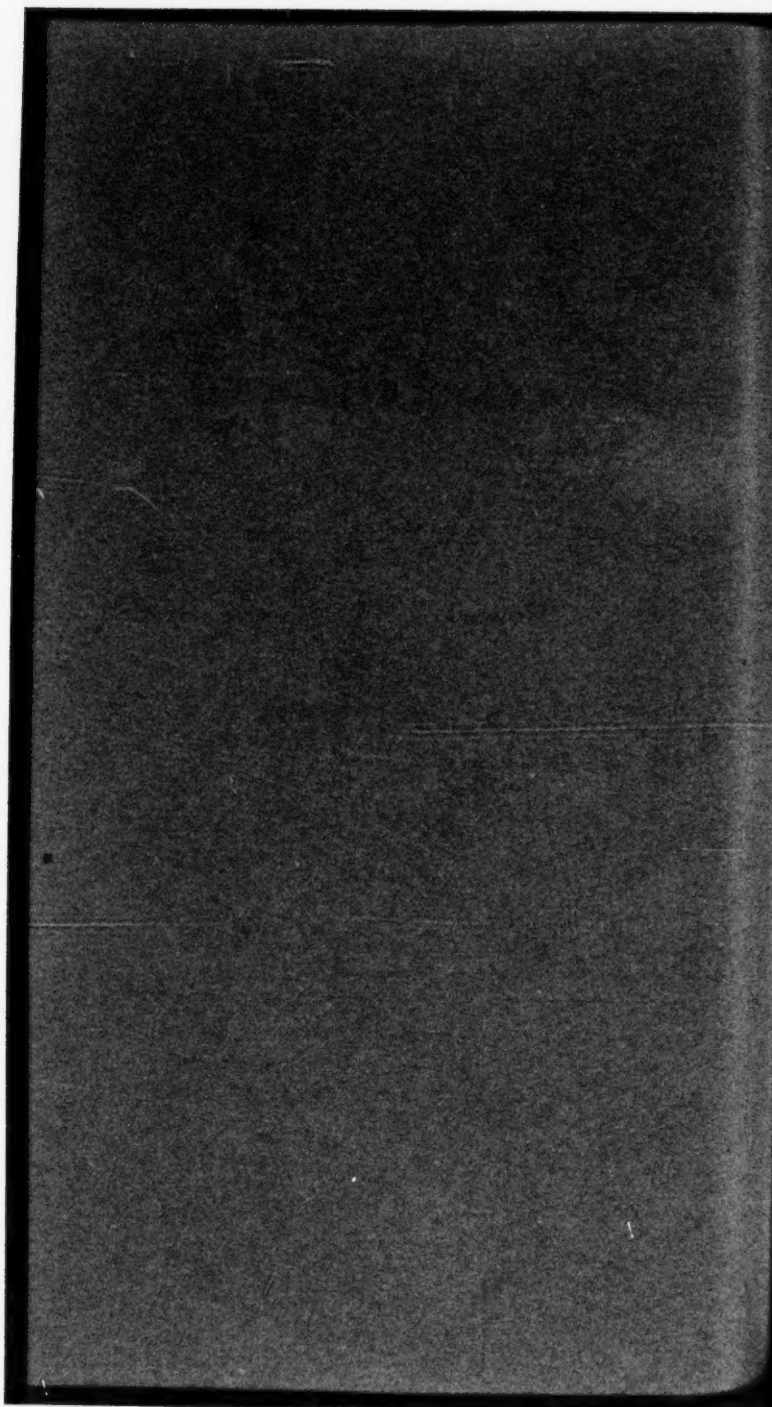


P. 100
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CHURCH OF THE HOLY TRINITY

THE TRINITY CHURCH

THE TRINITY CHURCH



In the Supreme Court of the United States.

OCTOBER TERM, 1898.

CHARLES H. INGWERSEN, PLAINTIFF	} No. 636.
in error,	
<i>v.</i> THE UNITED STATES.	

BRIEF FOR THE UNITED STATES.

STATEMENT.

QUESTION.

The questions raised are the constitutionality and construction of that provision of the act of June 13, 1898 (30 Stats., 448), known as the "War Revenue Act," which levies a tax "upon each sale, agreement of sale, or agreement to sell, any produce or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery."

On October 14, 1898, Charles H. Ingwersen, as agent of Ingwersen Brothers & Smith, the plaintiff in error, a corporation engaged in the live-stock commission business, made a sale of 19 head of cattle, weighing 22,280 pounds, at \$5.25 per hundred pounds, for \$1,169.70, the same being cattle consigned to Ingwersen Brothers & Smith for sale upon commission, to one David Moog, at the Union Stock Yards, of Chicago, without affixing to the written memorandum of the sale delivered by him to the buyer any revenue stamp, as required by the act mentioned.

For this an information was filed against him in the district court for the northern district of Illinois, and he was tried and convicted before Judge Grosseup and a jury. To reverse the judgment of conviction he has prosecuted error to this court.

He contends :

1. The provision of the War Revenue Act quoted is unconstitutional.

2. If valid, it does not apply to transactions at the Union Stock Yards, of Chicago, because these stock yards do not constitute "an exchange, or board of trade, or other similar place."

Having in the Chicago Board of Trade cases (*Nicol v. United States Marshal*, No. 435, and *Ex parte Nichols*, No. 4, Original) discussed by brief and orally the constitutionality of the taxing law in question, I shall confine myself in this brief to a consideration of the question as to whether the Union Stock Yards, of Chicago, is "an exchange, or board of trade, or other similar place."

ARGUMENT.

Attached to and made part of the information, as Exhibit A, is a description of the Union Stock Yards (Record, p. 4), and as Exhibit B, the act of incorporation and by-laws of the Union Stock Yard and Transit Company, which controls the Union Stock Yards (Record, pp. 5 to 13).

In addition to these documents, the record contains the testimony of W. B. Ingwersen, who testifies to the making of the sale without affixing a revenue stamp to the memorandum (Record, pp. 29 to 33), and the testimony of C. W. Baker, engaged in the live-stock business at the Union Stock Yards, who describes the Union Stock Yards and the method of dealing there (Record, pp. 33 to 44). I submit that a careful reading and consideration of this part of the record will satisfy the court that these yards constitute an exchange or other similar place within the meaning of the War Revenue Act.

Exhibit A, attached to the information (Record, p. 4), contains the following description of the Union Stock Yards:

The Union Stock Yards described in this information, at the respective times therein mentioned, and theretofore and since, covered and cover three hundred and thirty-five acres of land situated between Thirty-ninth street and Forty-seventh street and Halsted street and Ashland avenue, in the city of Chicago, in the county of Cook and State of Illinois, of which two hundred acres are covered by pens, which are made by fences surrounding and enclosing the same, there being alleys running through the yards separating the pens, into which alley gates

lead from the pens. The number of the pens is about five thousand and they are in size respectively from eight feet square to fifty feet square. Railway tracks belonging to and operated by the Chicago Junction Railway Company, which connect with all the lines of railway to the city of Chicago, extend into the yards, over which cattle, hogs, and other live stock received at or shipped from the Union Stock Yards are carried. Upon the arrival of cattle, hogs, or other live stock at the Union Stock Yards consigned to the commission merchant at the Union Stock Yards, such cattle, hogs, or other live stock are placed by the owner or consignee thereof, or his or its agents, in one or more of the pens, and are there cared for, fed, and watered by such owner or consignee. Any person is at liberty to send, take, or to receive cattle, hogs, or other live stock into the Union Stock Yards and there place, or have the same placed in a pen or pens, care for the same, and there sell any cattle belonging to him or which he has the right to sell. Any person has access to the pens containing cattle, hogs, or other live stock for the purpose of buying the same, and has liberty to purchase or negotiate for the purchase thereof. Sales of cattle, hogs, and other live stock in the yards are at private sale. Commission merchants having cattle, hogs, or other live stock in a pen or pens in the yards seek and solicit a buyer therefor, and when a proposed buyer is so found take him to the pens in which such live stock is contained, and there exhibit such live stock; and to such proposed buyer, or to any person who may come to said pen and who may desire to buy, such live stock is sold in the pen in which they are yarded. Sales of cattle, hogs, and sheep in the yards are by weight, and upon a sale thereof being made such live stock are taken by the

owner or commission merchant having charge thereof from the pen in which it is confined to a scale or scales in the yard and belonging to the Union Yard and Transit Company, and are there weighed by a weighmaster employed by the Union Stock Yard and Transit Company and in charge of the scale in which said live stock are weighed, and the weight of such live stock is thereby determined as the weight for which the purchaser pays upon his purchase, and the amount of the purchase price at the price per pound or per hundred pounds fixed in such sale is thereby determined.

It is to be observed that the stock yards cover 335 acres in Chicago, 200 acres of which are covered by 5,000 pens from 8 feet square to 50 feet square. Railway tracks belonging to and operated by the Chicago Junction Railway Company, connecting with all the lines of railway running into and out of Chicago, extend into the yards. Upon the arrival of cattle at the yards consigned to the commission merchant, the cattle are placed in the pens and there cared for by the owner or consignee. Any person may send cattle into the stock yards and have them placed in pens, and there sell them. Any person has access to the pens for the purpose of buying the cattle. Sales are made at private sale. Commission merchants having cattle in the yards seek a buyer, and when one is found take him to the pens and there exhibit the cattle, and sell them. Sales in the yards are by weight, the cattle being taken by the commission merchant to the yard scales, where they are weighed by the yard weighmaster, and this weight is used to compute the purchase price.

In other words, here is a place in Chicago, provided with pens, connected by its own railroad with all the railway lines both from the West and East that run into Chicago, where live stock are received, cared for, sold and delivered. Here the cattle from the West are placed before the buyer from the East. It is a place where the sellers and the buyers of live stock are brought face to face. The place itself, this live-stock exchange or dealing ground for buyers and sellers, is controlled by the Union Stock Yard and Transit Company, the constitution, or act of incorporation, and by-laws of which appear in the Record, pp. 5 to 13.

The act of incorporation of the Union Stock Yard and Transit Company, approved February 13, 1865, creates a corporation and gives it power—

To locate, construct, and maintain upon the land purchased for such purpose, in convenient proximity to the southerly limits of the city of Chicago, and west of Wallace street, as the same would be extended in a straight line south from said city limits, all the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches, and turn-outs, aqueducts, for the reception, safe-keeping, feeding and watering, and for the weighing, delivery, and transfer of cattle and live stock of every description and also dead and undressed animals that may be at, or passing through or near, the city of Chicago, and for the accommodation of the business of a general union stock yard for cattle and live stock, including the erection and establishment of one or more hotel buildings, and the right to use the same, if deemed expedient, for the convenience of drovers, dealers, and the public doing business at the said yards (section 2).

In the same section the company is given power "to make advances of money upon such cattle and live stock, for freight or other purposes, as may become expedient."

The company is also authorized to construct a railway, with one or more tracks, and with the necessary side tracks and switches, from its stock yards, so as to connect the same with the tracks of all the railroads which terminate in Chicago, and to transport thereon between said railroads and cattle yards all cattle and live stock and persons accompanying the same to and from said yards. Power to fix the rates for freight and property transported is given, with this important proviso, recognizing the quasi public character of the use to which the projected yards with transportation facilities were to be put :

Provided all fees and charges for freights, hotel bills, feeding, carrying, and everything done by reason of the powers herein given shall be subject to any general law that may be passed by the legislature of this State in reference to stock yards of railroads. (Section 3.)

The subsequent sections give the company the right to accept grants and donations (section 4), fixes its capital stock at \$1,000,000 (section 5), vests the corporate powers in a board of directors (section 6), provides for the election of this board (section 7), authorizes the adoption of by-laws (section 8), provides for the crossing of streams and roads (section 9), empowers the company to borrow money (section 10), and provides for an equal treatment of all connecting railroads (section 11).

There are no provisions in the by-laws requiring special notice.

The testimony of C. W. Baker, engaged in the live-stock business at the Union Stock Yards, is of special interest. I call particular attention to that portion printed on pages 42 to 43 of the Record, as follows:

The COURT. What number of cattle are brought into these stock yards every year?

The WITNESS. Two and one-half million cattle and 8,000,000 hogs last year, I think.

The COURT. What proportion of the production of this western country is that?

The WITNESS. Well, I should be pleased to furnish the court some figures on the subject. I wouldn't want to answer it off hand.

The COURT. I mean only approximately.

The WITNESS (after computation). Oh, one-fifteenth.

The COURT. Is there any other yard where so many cattle and hogs are sold?

The WITNESS. No, sir.

The COURT. It is the largest in that respect in the country?

The WITNESS. The largest stock yards in the world; yes, sir.

The COURT. About how many commission merchants are there at the stock yards?

The WITNESS. One hundred and ten firms; each firm is composed of one or more.

The COURT. How are they quartered there?

The WITNESS. They rent offices from the Union Stock Yards and Transit Company, who have provided an exchange building, located in the center of the yards.

The COURT. They are all in one building?

The WITNESS. Yes, sir.

The COURT. What proportion of these animals that are brought in are bought by the commission men?

The WITNESS. A very small proportion; I should say probably 5 to 10 per cent. And in making that statement I wish to say that all the class, I think, that commission men buy are such as are known as stockers and feeders, which they purchase for their customers to take back into the country. In other words, a countryman will bring two loads of cattle to the stock yards to his commission man for sale, to handle. The countryman desiring to place more cattle on feed, he goes, in company with his commission man, to what are known as the stocker pens, feeder pens, and there buys some thin cattle and takes them back to his farm to feed them.

The COURT. Who buys the fat cattle?

The WITNESS. The Eastern buyers located at Chicago and the slaughterers.

The COURT. How are the Eastern buyers represented?

The WITNESS. They have their regular representatives here.

The COURT. Commission men?

The WITNESS. No, sir; they have——

The COURT. They have offices, too?

The WITNESS. Yes, sir.

The COURT. In the same building?

The WITNESS. Yes, sir.

The COURT. And they watch the shipments of the animals as they come in, and make their purchases?

The WITNESS. Yes, sir. The custom is, for a commission man who receives the live stock, if he is a judge of his business, when he receives 10 carloads of live stock he knows about what class of buyers will handle each class, and he goes himself with his buyer, takes him to certain pens till he gets a certain price.

The COURT. What proportion of these animals are shipped to commission men?

The WITNESS. Oh, practically all—practically all.

The COURT. The commission men who have their offices in that building?

The WITNESS. Yes, sir.

The COURT. Is it a rare thing for the owner to bring in his own shipment?

The WITNESS. He very frequently consigns his stock to himself, then turns it over to a commission man for sale. In some few isolated instances sells it himself.

The COURT. So that really those 110 commission firms who occupy offices out there buy up the cattle over the country and sell it to the Eastern buyer whose representative is there, and to the slaughter-houses?

The WITNESS. No; they receive it and sell it on commission.

The COURT. Yes; I mean they receive the cattle.

The WITNESS. Yes, sir.

The COURT. And sell it to those Eastern houses?

The WITNESS. Yes, sir.

The COURT. And to the slaughterers?

The WITNESS. Yes, sir.

The COURT. That practically constitutes their business at the yards?

The WITNESS. Yes, sir. Of course there is some speculation there, as there always is around such market centers.

The COURT. Well, I do not think of anything else myself.

From the uncontroverted testimony of this witness it appears that the Union Stock Yards of Chicago are the largest stock yards in the world. About 2,500,000 cattle and 8,000,000 hogs, about one-fifteenth of the produc-

tion of our Western country, are brought into these stock yards yearly. The business in the yards is practically transacted by the commission firms, the slaughterers, and the Eastern buyers. The stock yards company has provided an exchange building, located in the center of the yards. The commission firms (there are 110 of them) rent offices in the exchange building. Here also are located the representatives of the Eastern buyers. Practically all the cattle shipped to the yards are sold by the commission men. It is only in isolated instances that an owner sells his cattle himself. The cattle, except the stockers and feeders (which amount to 5 or 10 per cent of the cattle received and are bought by commission men for farmers and stock raisers to fatten), are sold to the Eastern buyers and to the slaughterers. The commission man who receives cattle knows about what buyers will handle each class of stock he receives; so he goes himself to the buyers and takes them to the pens until he disposes of the cattle. In short, 110 commission firms receive the enormous shipments of cattle at the Chicago Stock Yards and sell them to the slaughterers and Eastern buyers. This practically constitutes the business carried on at the yards.

The Union Stock Yards were constructed and are owned and operated by the Union Stock Yard and Transit Company, a corporation with a capital stock of \$1,000,000. The company has not only provided pens for receiving, caring for, and exhibiting the cattle, but railroad facilities for transporting them to and from the yards and an exchange building for the use of those who deal in the yards—sellers and buyers.

For these facilities the company fixes and collects the rates and charges.

To operate with advantage on the yards the commission men, who are the sellers, and the representatives of the Eastern houses, who are the buyers, have to rent offices in the exchange building, for which they must pay the company such rents as it may fix.

To get his cattle into the yard, which is the market, the owner, or the commission man to whom the cattle are consigned, must pay the company the freight or switching charges on its private railway, and after the cattle reach the yard must pay the charges for the use of the pens, and for their feed, these charges being covered, I understand, by the term "yardage." (Brief of plaintiff in error, p. 39.)

The facilities and privileges of the greatest live-stock market in the world are therefore not *free*, in the sense of being without cost, either to cattle owner or yard dealer. Each has to pay the company for the privilege. The privilege is paid for indirectly, but none the less paid for. The live stock are carried into the yard by the Stock Yard Company over its own railroad, and for this it charges what it sees fit. The stock when received in the yard must be put in pens and fed and watered, and for these facilities the Stock Yard Company charges what it thinks proper. The dealers in live stock on the yard, sellers and buyers, in order to do business with success, must have offices in the exchange building, so they can readily find one another, and for this accommodation the Stock Yard Company prescribe the rates.

So while it is true that anyone may send his cattle into

the yards and there sell them, it is not true that he can do so without paying for the privilege. He pays for the privilege of using the market by paying for the accommodations which go along with the market and really constitute it.

Moreover, it is to be borne in mind that *practically all* the cattle sold on the yards are shipped to commission men (Rec., p. 43), so it is apparent that to enjoy to the best advantage the privileges and facilities of this market the owner of the live stock must employ a broker and pay him a commission. The sale in the case before the court was made by a commission firm. (Rec., p. 3.)

We have therefore here a defined place, under control of one company, constituting the largest live-stock market in the world, provided with every facility and accommodation for dealing in live stock, where the business is practically all transacted by dealers—sellers and buyers, with offices in the yards, and it is insisted that this is not an exchange, nor a similar place. What is the essential feature of an exchange? Surely the bringing together, under circumstances convenient for business, of dealers in the particular commodity; the facility of a great market, where the man who has something to sell may find a buyer with the least trouble and make a sale under the best conditions. The law taxes sales at exchanges or similar places because of the privileges and facilities the seller enjoys there which are not enjoyed elsewhere.

The argument of counsel for the plaintiff in error proceeds on the theory that it is the privilege of dealing on an exchange where such privilege is confined to members

that is taxed, and that you can not have an exchange or similar place unless the dealing at the place is restricted to members. This is to look at the law from the broker's point of view. The tax is not one on the occupation of a stock or produce broker. There is a separate tax on that. This tax is one on the sale or agreement to sell at an exchange or similar place, whether made by the owner of the commodity or his agent or broker. The wording of the act itself shows the tax applies whether a broker is used or not, and therefore must apply to sales at places where it is not necessary to use brokers. The seller is the one liable for the tax, and the law provides :

And any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall—

make a sale or deliver the goods without complying with the law, shall be punished as provided in the act. The law is designedly made applicable not only to the agent or broker, but to the owner. So it applies and was intended to apply to places where the owner can make his own sale, as well as to those where an agent or broker acts for him.

It is only necessary that the sale be made at an exchange or similar place—at a place where the facilities and privileges enjoyed by the seller and the character and magnitude of the business done by the dealers segregate the sales made there from other sales and bring them within the class which Congress intended to reach by this act. Is there any reason for taxing sales on the Chicago Board of Trade which does not equally apply to sales at the Union Stock Yard?

Does not the latter furnish the live-stock man privileges and facilities equivalent in their way to what the former furnishes the grain man? Does not the magnitude of the transactions on the stock yard compare favorably, in point of taxability, with those on the board of trade? Where, then, is the distinction? Opposing counsel find it in the fact that the owner is allowed to sell at the stock yards. True he does not do so. He finds it to his advantage, in order to obtain the full benefit of the market, to employ one of the 110 commission firms who sell practically all the stock sold on that yard. But he might do so; he is not debarred from the yard, as he is from the board of trade, and for that reason the sale he makes ought not to be taxed, was not intended to be taxed. But he has all the advantage of selling at a place set apart and especially arranged for dealers in live stock—at the greatest live-stock market in the world—where the highest skill and enterprise, with unlimited means at its call, have devised and provided every conceivable convenience and facility for receiving, keeping, exhibiting, selling, and delivering live stock to the biggest and best buyers obtainable anywhere. Nowhere in the world are there collected as many responsible buyers of live stock as at this exchange.

Opposing counsel cites what I say in my brief in the Board of Trade Cases as showing I limit an exchange to a place where only members of an association can deal. I submit my language, when fairly read, conveys no such meaning. True, I said, "I think it sufficiently appears from what I have said that the seller on an exchange enjoys facilities or privileges which the out-

sider does not," but the "outsider" I had in mind was the one who sells elsewhere than at an exchange, and the "seller on an exchange" was the *actual seller*, whether a member or not, and whether operating individually or through a broker.

In enacting this law Congress intended to take toll on the great highways of commerce, in the great marts through which the products pass on their way from the producer to the consumer. The tax is an indirect one, falling on the movement or transfer of commodities, and the places selected for taking the toll is where this movement or transfer is compressed or confined within measurable limits, namely, at the Boards of Trade or exchanges, or similar places. To these places both sellers and buyers resort; through them flows the enormous current of commodities. Here the Government can, with least inconvenience, collect a contribution for its support. The Union Stock Yards is one of these places. The dealers in meat are just as able to bear this tax as the dealers in wheat. The law intends to reach all sales at exchanges, whatever the product sold. Different products require different exchanges. The Union Stock Yards is the sort of exchange dealers in live stock demand; otherwise Chicago would change it. The advantages the seller finds there are the best the world affords, and he ought to be willing to pay his slight contribution to the support of the Government, without whose protection this great exchange could hardly exist.

JOHN K. RICHARDS,

Solicitor-General.

JANUARY 17, 1899.